

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,)	
)	
v.)	
)	CRIMINAL CASE NO. 1:11-CR-161-1
)	
JOHNNY REID EDWARDS.)	
)	
)	

JOHN EDWARDS' MOTION FOR PERMISSION TO FILE REPLY BRIEFS

John Edwards, through his undersigned counsel, pursuant to LCrR 12.1, 57.1 and LR 7.3, and moves this Court for permission to file Reply Briefs in response to matters that raised by the government in its responses to dispositive motions filed by the Defendant. The grounds for this Motion are that Reply Briefs, limited to no more than 35 pages and served within fourteen (14) days of the service of the government's responses will assist the Court in its determination of the dispositive motions filed by the Defendant, particularly in light of the novel theory under which the government is proceeding in this prosecution. Contemporaneously with this Motion, the Defendant is filing these Reply Briefs. In further support of this Motion, the Defendant shows unto this Court that:

1. The Defendant has been charged in a six-count Indictment with conspiracy, the illegal receipt of campaign donations, and causing his Presidential Campaign to make a false statement by failing to report alleged campaign donations.

2. On July 14, 2011, the Hon. Carlton Tilley, ordered that dispositive motions in this matter were to be filed by the Defendant on or before September 6, 2011. The Court further ordered that the government's responses would be due twenty (20) days later, on September 26, 2011.

3. On September 6, 2011, the Defendant filed and served five separate dispositive motions: (1) a motion to dismiss based on the failure of the Indictment to charge a crime under the federal election laws; (2) a motion to dismiss (or in the alternative for discovery) based on an abuse of prosecutorial discretion; (3) a motion to dismiss based upon grand jury irregularities (filed under seal); (4) a motion to dismiss the Indictment for charging defects; and (5) a motion to dismiss the conspiracy count of the Indictment.

4. These motions raised substantial issues concerning the validity of the counts in this matter, the validity of the theory under which the government is proceeding, and the validity of the prosecution itself. Specifically, the government charges the Defendant with the receipt of illegal campaign contributions based upon money which was never paid into his campaign, which was never used for campaign activity, and which was never used to advocate his election. No candidate has ever been charged with a crime under this theory.

5. On September 26, 2011, and in conformity with Judge Tilley's Order, the government filed its Responses to the Defendant's dispositive motions. The

government's responses to the five motions total 154 pages; its response to the Motion to Dismiss for Failure to Allege a Crime by itself is 65 pages.¹ Embedded in these responses are new issues, new claims, and new theories of this case.

6. Given the novelty of the government's prosecution, the complex regulatory and constitutional structure that overlays the acts alleged in the Indictment, and the length of the government's responses, the Defendant believes that additional and limited briefing in the form of Reply Briefs will assist the Court in determining the statutory, constitutional and regulatory issues presented by this case.

7. While not applicable to criminal cases, the local civil rules provide for Reply Briefs in civil cases limited to new issues raised in a response. Those rules further provide fourteen (14) days after service within which to file a Reply, limited to 20 pages. LR 7.3. The Defendant requests that he be permitted to file Reply Briefs in response to the government's oppositions of no more than 35 pages and that the Reply Briefs be filed on Tuesday, October 10, 2011, fifteen days after the service of the Governments' oppositions.²

8. Trial in this case has been continued until the January 2012 term. Consequently, the filing of Reply Briefs will not interfere with the trial date, if necessary,

¹ This particular response is in excess of the 45 page limit provided for in the Court's Order of September 26, 2011 and discussed between counsel. However, and to the extent necessary, the Defendant consents to the filing of this Memorandum by the Government in excess of the 45 page limit *nunc pro tunc*.

² Monday, October 10, 2011, the fourteenth day, was a federal holiday.

in this matter. To the contrary, the filing of Reply Briefs may assist the Court in its determination of the dispositive motions, motions which, if granted, will obviate the need for a trial altogether.

9. Counsel for the Defendant has conferred with counsel for the government. Based on that conversation, counsel for the Defendant advises the Court that the government takes no position as to this request to file Reply Briefs.

WHEREFORE, the Defendant prays that he be given permission to file a Reply to the government's response to each of his dispositive motions not to exceed 30 pages in length.

Dated: October 11, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2011, I electronically filed the foregoing **Motion for Permission to File Reply Briefs** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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